

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs July 18, 2023

FILED

07/24/2023

Clerk of the  
Appellate Courts

**ROBERT WAYNE GARNER v. GRADY PERRY, WARDEN**

**Appeal from the Circuit Court for Wayne County  
No. 17217 Christopher V. Sockwell, Chancellor**

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**No. M2022-01733-CCA-R3-HC**

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Petitioner, Robert Wayne Garner, appeals from the Wayne County Circuit Court's summary denial of his second petition for habeas corpus relief, in which he challenged the sufficiency of the felony murder indictment under which he was convicted. Petitioner argues on appeal that the habeas corpus court erred in failing to make findings of fact and conclusions of law in denying relief. After review, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Robert Wayne Garner, Clifton, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; and Richard D. Douglas, Senior Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

*Facts and Procedural History*

Petitioner brutally murdered his former landlady in 2010. *State v. Robert Wayne Garner*, No. M2011-02581-CCA-R3-CD, 2013 WL 5461099, at \*1 (Tenn. Crim. App. Sept. 30, 2013), *perm. app. denied* (Tenn. Feb. 12, 2014) (designated not for citation). Petitioner assaulted, bound, gagged, and robbed the victim, and then set fire to her house, killing her. *Id.* A Giles County jury convicted Petitioner of first-degree felony murder, aggravated arson, and theft of property over \$10,000. *Id.* Petitioner received a total

effective sentence of life imprisonment plus twenty-five years. *Id.* A panel of this Court affirmed Petitioner’s convictions on direct appeal. *Id.* Petitioner has since unsuccessfully sought post-conviction relief, relief under the Post-Conviction Fingerprint Analysis Act of 2021 (“Fingerprint Act”), and coram nobis relief. *See Robert Wayne Garner v. State*, No. M2017-00417-CCA-R3-PC, 2018 WL 5840846, at \*1 (Tenn. Crim. App. November 7, 2018), *perm. app. denied* (Tenn. Mar. 28, 2019) (post-conviction proceeding); *Robert Wayne Garner v. State*, No. M2021-01396-CCA-R3-PC, 2023 WL 166832, at \*1 (Tenn. Crim. App. Jan. 12, 2023), *perm. app. denied* (Tenn. Mar. 9, 2023) (consolidated Fingerprint Act and coram nobis proceedings).

Petitioner filed his first petition for writ of habeas corpus in 2019. *Robert Wayne Garner v. Grady Perry, Warden*, No. M2019-01349-CCA-R3-HC, 2020 WL 4719310, at \*1 (Tenn. Crim. App. Aug. 13, 2020), *perm. app. denied* (Tenn. Dec. 2, 2020). Petitioner argued that his life sentence was illegal because the statute governing his release eligibility did not allow for the possibility of parole. *Id.* The habeas corpus court summarily denied relief for failure to state a cognizable claim, and a panel of this Court affirmed. *Id.*

Petitioner filed the petition for writ of habeas corpus at issue here in September 2022. The habeas corpus court summarily denied relief for failure to state a cognizable claim for relief, and this appeal followed.

### *Analysis*

In this petition, Petitioner argues that he is entitled to habeas corpus relief because his felony murder indictment did not provide adequate notice of the charged offense. Petitioner also asserts that Count Two of his indictment, which charged felony murder, is deficient because the trial court never ruled on the State’s motion to amend the indictment to reflect a citation to the proper statute. He argues the indictment’s deficiencies deprived the trial court of jurisdiction and his conviction is thus void. He contends on appeal that the habeas corpus court erred in failing to make findings of fact and conclusions of law in its summary denial of habeas corpus relief. The State argues that the habeas corpus court properly denied the petition because Petitioner failed to state a cognizable claim for habeas corpus relief. We agree with the State.

Article I, section 15 of the Tennessee Constitution guarantees to prisoners the right to seek habeas corpus relief. As such, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever . . . may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” T.C.A. § 29-21-101. That said, the grounds on which habeas corpus relief will be granted are narrow. *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004). Habeas corpus relief is available only when it appears on the face of the judgment or record of the proceedings that the convicting court was without jurisdiction

or that the petitioner is still imprisoned after his sentence has expired. *Id.*; *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). In other words, habeas corpus relief may be granted only when the judgment of conviction is void, rather than merely voidable. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007). A void judgment is “one that is facially invalid because the court did not have statutory authority to render such judgment.” *Id.* at 256 (citing *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998)). A voidable judgment is “one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity.” *Summers*, 212 S.W.3d at 256 (citing *Dykes*, 978 S.W.2d at 529).

A habeas corpus petitioner may challenge the validity of an indictment “when the indictment is so defective as to deprive the court of jurisdiction.” *Dykes*, 978 S.W.2d at 529. An indictment must provide the accused with “the nature and cause of the accusation” against him. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. The indictment must state the facts in such a way that “enable[s] a person of common understanding to know what is intended.” T.C.A. § 40-30-202. “[A]n indictment is valid if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for entry of a proper judgment, and (3) to protect the accused from double jeopardy.” *State v. Hill*, 954 S.W.2d 725, 727 (Tenn. 1997) (citations omitted).

Count Two of Petitioner’s indictment charges that Petitioner “did unlawfully, knowingly, intentionally, or recklessly [perpetrate] or attempt to [perpetrate] the offenses of Aggravated Arson and/or Theft over [\$]10,000, in which [the victim] was killed, in violation of Tennessee Code Annotated 13-14-402(a)(1).” The State filed a motion before trial to amend the indictment to cite to “Tennessee Code Annotated 39-13-202(a)(1),” which is the felony murder statute. According to the State’s motion, the original statutory citation was a typographical error and was not made in bad faith. The State argued in its motion that Petitioner would not be prejudiced by this amendment because he knew or should have known that the indictment alleged felony murder. For reasons that are not apparent from the record before us, the trial court never ruled on this motion. Tennessee Code Annotated section 13-14-402(a)(1) did not exist at the time of trial and does not exist today.

We find that the indictment here was sufficient to allow “a person of common understanding” to comprehend “the nature and cause of the accusation” against him and to confer jurisdiction on the trial court. The text of the indictment contained all of the essential elements for felony murder: (1) that the victim was killed, and (2) that the killing occurred in the perpetration of one of the enumerated felonies, here, aggravated arson and theft over \$10,000. The indictment also charged that the murder took place in Giles County.

Petitioner makes much of the fact that the indictment listed the wrong statute, but the text of the indictment was sufficient for Petitioner to know that he was charged with first degree felony murder, for the trial court to properly enter judgment, and to protect Petitioner from double jeopardy. This Court has moreover concluded that ““a reference in an indictment to the wrong statute number is not a fatal defect if the language is otherwise sufficient.”” *Montez Adams v. Cherry Lindamood, Warden*, No. M2016-01073-CCA-R3-PC, 2017 WL 564897, at \*2 (Tenn. Crim. App. Feb. 13, 2017) (quoting *Hugh Andrew Nicely v. State*, No. M2005-01732-CCA-R3-HC, 2008 WL 544600, at \*14 (Tenn. Crim. App. Feb. 22, 2008)); *see also McCracken v. State*, 489 S.W.2d 51 (Tenn. Crim. App. 1972) (concluding that the trial court’s treatment of an erroneous code section in a presentment as “surplusage” was proper). Petitioner has failed to establish that the indictment was so deficient as to render his convictions void.

“When a habeas corpus petition fails to demonstrate that the judgment is void, a trial court may properly dismiss the petition without a hearing.” *Hickman*, 153 S.W.3d at 20 (citing T.C.A. § 29-21-109 (2000); *Dixon v. Holland*, 70 S.W.3d 33, 36 (Tenn. 2002)). Petitioner failed to demonstrate that his judgment was void, so the habeas corpus court did not err in dismissing the petition without a hearing. The habeas corpus court likewise did not err in failing to make findings of fact and conclusions of law. *See, e.g., Milburn L. Edwards v. Cherry Lindamood, Warden*, No. M2009-01132-CCA-R3-HC, 2010 WL 2134156, at \*3 (Tenn. Crim. App. May 27, 2010) (affirming summary denial of habeas corpus relief where habeas corpus court did not make findings of fact and conclusions of law and petitioner failed to state a cognizable claim for relief), *no perm. app. filed*. Petitioner’s arguments to the contrary are unavailing, and he is not entitled to relief.

### *Conclusion*

Because the indictment was sufficient on its face, Petitioner’s convictions are not void. Petitioner did not state a cognizable claim for relief and the habeas corpus court properly summarily denied his petition. The judgment of the habeas corpus court is accordingly affirmed.

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TIMOTHY L. EASTER, JUDGE